

EXHIBIT B

1

1 SUPREME COURT OF THE STATE OF NEW YORK

2 COUNTY OF NEW YORK : CIVIL TERM : PART 60

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3 MARK OWEN, Individually,
4 and on behalf of all others similarly situated,

5
6 Plaintiff(s).

Index

7 -against-

650628/2019

8 ELASTOS FOUNDATION, FENG HAN, AKA SUNNY FENG HAN,
9 RONG CHEN, RAY LI, ZACH WARSAVAGE, STEVEN S. NAM,
10 LEE WILSON, BEN LEE, HBUS HOLDCO, INC., and HUOBI GLOBAL
11 LIMITED,

12 Defendant(s).

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13 60 Centre Street
14 New York, New York 10007
15 May 23, 2019

16 B E F O R E:

17 HONORABLE MARCY FRIEDMAN, Supreme Court Justice

18 APPEARANCES OF COUNSEL:

19 For the Plaintiff

20 RAITI, PLLC

21 BY: WARREN RAITI, ESQUIRE

22 80 Broad Street, Suite 2502

23 New York, New York 10004

24 For the Defendants

25 ORRICK HERRINGTON & SUTCLIFFE, LLP

BY: KENNETH HERZINGER, ESQUIRE

JORGE PESOK, ESQUIRE

WILLIAM FOLEY, ESQUIRE

MATTHEW REEDER, ESQUIRE

51 West 52nd Street

New York, New York 10019

Janelle C. London, RPR, CRR
Senior Court Reporter
JCL

2

Proceedings

1 THE COURT: On the record. Good afternoon,
2 Counsel. This is Judge Friedman. Without full appearances,
3 can you just state your names for the record, please?

4 MR. RAITI: My name is Warren Raiti.

5 MR. HERZINGER: Your Honor, this is Ken Herzinger
6 on behalf of the defendants.

7 THE COURT: Are there other counsel for the
8 defendants on the line?

9 MR. HERZINGER: Yes, Your Honor. With me on the
10 line for the defendants is Jorge Pesok, William Foley, and
11 Matthew Reeder.

12 THE COURT: Thank you. And Mr. Herzinger, you are
13 from which firm?

14 MR. HERZINGER: I am with the law firm of Orrick
15 Herrington & Sutcliffe, Your Honor.

16 THE COURT: Thank you. And Mr. Raiti?

17 MR. RAITI: Yes, I'm with Raiti, PLLC.

18 THE COURT: And do you have any other lawyers from
19 your firm with you on the call?

20 MR. RAITI: No.

21 THE COURT: Okay. Just at least at the beginning
22 of the conversation, please say your names before you speak
23 because the voices are very hard to distinguish over the
24 phone.

25 So, we have the plaintiff's application for an

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3

Proceedings

1 ex-parte order, extending time to make service pursuant to
2 CPLR 306-b, and we have the defendant's letter setting forth
3 its position in opposition. And with respect to the two
4 defendants who have not been served to date, Fay, F-a-y and
5 Li, L-i and Ben, B-e-n Lee, L-e-e, is it -- is it the
6 defendant's position that I can appropriately hear this
7 application without further motion papers?

8 Let me just be very -- I'm sorry. Let me just be
9 very forthright about this. I had a case recently where the
10 parties, the defendants, were taking the position that an
11 ex-parte extension could not be authorized and that there
12 had to be a hearing in which all appearing parties had the
13 opportunity to weigh in on the service. And I thought I'm
14 just not going to have a technical objection to the decision
15 of a request for an extension of time to make service that
16 it wasn't properly briefed. So, can I hear -- is there
17 going to be any objection by the defendants to my just
18 hearing this on the phone today without further filings?

19 MR. HERZINGER: Your Honor, this is Ken Herzinger.
20 Yes, we would like to have an opportunity to fully brief the
21 issue. And the reason I'm sure is clear from Mr. Raiti's
22 papers is this is not a simple or standard case and it
23 involves, you know, foreign defendants, the Hague Convention
24 and, you know, I think a more complex analysis than might
25 ordinarily might be the case. So we would appreciate the

JCL

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4

Proceedings

1 ability to fully brief, you know, from our perspective, at
2 least have, a, you know, a chance to respond to the
3 plaintiff's brief and with any, you know, additional
4 documentary information that might be helpful for Your
5 Honor.

6 THE COURT: Mr. Raiti, what is your position on
7 that threshold issue?

8 MR. RAITI: Plaintiff would oppose having
9 opposition papers come in on this particular issue for
10 several reasons. The first of which is that the main points
11 that Mr. Herzinger has raised with respect to complexity of
12 the case and Hague Convention. We cite case law in our
13 argument that effectively makes the points that defendants
14 are residing or nationals of a country such as, in this
15 case, China, where a fairly well-known fact that process can
16 take years to effectuate. That process is -- or proceeding
17 under that process is impracticable. And I think as well we
18 have really gone above and beyond the requirements of CPLR
19 3085 in terms of the attempt to ascertain the locations and
20 addresses of the remaining individual defendants.

21 As Your Honor correctly noted, we have three of
22 these defendants served, which, to be honest, is only due to
23 really luck on our part and a great deal of focus on trying
24 to effectuate that service. But really has been a matter of
25 luck and we think it's really quite impossible to effect

JCL

5

Proceedings

1 service on the remaining defendants and think that the
2 prejudice of that would outweigh the ability to simply
3 effect service on them through defendant's counsel who
4 already appeared in this case and prides themselves of it.

5 We also have a time consideration. If I may, Your
6 Honor, in that the statute of limitations to serve the
7 remaining defendants expires on May 31st. So I believe that
8 further briefing on this issue may run over that line where
9 we could as of today, if granted leave by the court, serve
10 directly on counsel for defendants.

11 THE COURT: All right. Can I -- is there a
12 response to that?

13 MR. HERZINGER: Yes, Your Honor. And just starting
14 with the last point first. With all due respect to
15 plaintiff's counsel, the timing issue is really an issue of
16 their own making. So, you know, we're now just about a week
17 away from, you know, the cutoff and the deadline and, you
18 know, and that's why the plaintiff has moved ex parte, but
19 they couldn't -- they could have moved previously, including
20 when Mr. Raiti first reached out to me a couple weeks ago
21 and we wouldn't be under the situation and couldn't fully
22 brief it for the court.

23 So we think for that reason, among others, and
24 Mr. Raiti touched on some of the substantive issues, we also
25 think that really the plaintiff's efforts did not commence

JCL

Proceedings

1 in earnest until April of this year, roughly about a month
2 ago or less than a month ago, April 26th, when they retained
3 the first, you know, detective agency to try to identify
4 individuals. And it wasn't until April 29th that they
5 actually retained a process server to actually go out and
6 serve and then they were able to serve. And then they were
7 able to serve.

8 Mr. Raiti said, he said luckily, but they were able
9 to serve three of defendants in the last couple weeks. So,
10 we don't, you know, agree on the urgency, Your Honor, and we
11 don't agree on the merits, but in particular on the urgency,
12 we believe this matter should be briefed.

13 MR. RAITI: May I respond in very short fashion,
14 Your Honor?

15 THE COURT: Yes.

16 MR. RAITI: To put it in summary, we've been
17 undertaking efforts to try and locate defendants since
18 before we filed the summons of notice. The efforts that
19 Mr. Herzinger is referring to did not lead to our ability to
20 serve the defendants. That -- that service came from a much
21 more long term due diligence that myself and others in my
22 direction had been performing and is summarized in my
23 affidavit. The due diligence and the materials that
24 defendant's counsel is referring to have really all come
25 back negative with respect to whether it's the detective

JCL

7

Proceedings

1 agency or the process server's ability to even begin to look
2 for the remaining defendants because the names are, frankly,
3 so common that it proves basically impossible to locate
4 them. It's, you know, not a needle in the haystack, but a
5 needle in a hayfield.

6 THE COURT: All right. I am prepared to issue an
7 interim ruling at this time. I find that good cause exists
8 to authorize a 120-day extension of time to make service.

9 I am going to reserve decision as to the manner by
10 which service should be made and I will afford Orrick the
11 opportunity to put opposition papers -- to put in opposition
12 papers that fully address the arguments in plaintiff's
13 ex-parte application. So this will be also deemed an
14 application on notice. Can I have the opposition papers by
15 June 3rd? Mr. Herzinger, can you do that by June 3rd?

16 MR. HERZINGER: We can. Absolutely, Your Honor.

17 THE COURT: All right. Please e-file them and file
18 two hard copies with the clerk of the part and I will have a
19 reply, if any, by June 10th, also to be e-filed with two
20 hard copies to the clerk of the part. We will have a
21 tentative date for oral argument on June 18th at 10:30 a.m.
22 If I -- 10:30 a.m. After reading the papers, I decide oral
23 argument is not necessary, we will call you in advance to
24 cancel that June 18th date.

25 It is also requested that plaintiff obtain a copy

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Proceedings

1 of the transcript of today's proceedings, e-file it and file
2 two hard copies with the clerk of Part 60. The transcript
3 will not be so ordered until the hard copies are filed.

4 I remind you that I reserve the right to correct
5 errors in the transcript. Therefore, if it is needed for
6 any further purpose, you should be sure you have a copy as
7 so ordered by me and not merely as signed by the court
8 reporter. And in the -- withdrawn.

9 That concludes my ruling. I will leave the call so
10 that you can obtain the court reporter's information. Thank
11 you.

12 MR. HERZINGER: Thank you, Your Honor.

13 MR. RAITI: Thank you, Your Honor.

14 * * * *

C E R T I F I C A T E

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16
17 Whereupon, the foregoing proceedings is certified to be a true
18 and accurate recording of the stenographic minutes taken within.

19 
20 Janelle C. London, RPR, CRR
Senior Court Reporter

21 **SO ORDERED**

22  6/4/19
23
24 **MARCY S. FRIEDMAN, J.S.C.**
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